

### **REMARKS**

This application has been reviewed in light of the Office Action dated September 9, 2004. Claims 41-60 are pending in the application. No new matter has been added. The Examiner's reconsideration of the rejection in view of the amendment and the following remarks is respectfully requested.

By the Office Action, claims 47 and 57 were rejected under 35 USC §112, second paragraph, since claims 47 and 57 do not further limit their respective independent claims. The Applicant respectfully disagrees with the rejection.

Claim 47 and 57 are dependent from claims 41 and 50, respectively. Claims 41 and 50 include a bake mix and claims 47 and 57 further limit the use of the bake mix to a bakery product. It is therefore respectfully submitted that claims 47 and 57 further limit the independent claims 41 and 50. However to further prosecution of the case, claims 47 and 57 have been amended in a way believed to overcome the rejection. Reconsideration of the rejection is earnestly solicited.

By the Office Action, claims 41-60 stand rejected as being unpatentable in view of U.S. Patent No. 5,711,982 to Takemori et al. (Takemori), U.S. Patent No. 4,442,132 to Kim (Kim) and U.S. Patent No. 4,950,140 to Pflaumer et al. (Pflaumer).

The Examiner cites Takemori, Pflaumer and Kim to show the use of the elements of the present claims in food products. However, each combination of ingredients in the prior art fail to provide a gluten free and sugar free product simultaneously as in the present claims. The Examiner notes that gluten-free is not recited in the claims. However, claim 41 and 50 recite flour free, which is generally the main source of gluten. Claim 59 recites without gluten. Claims 41 and

50 have been amended to reflect gluten free. The elements and proportions recited in the claims provide the binding features of the product to substitute for the gluten in conventional products.

The Applicant believes that the claims as presented are not obvious in view of the art cited. (See, for example, previous responses). However, to overcome the obvious-type rejection, the Applicant submits herewith Declarations in support of Commercial Success and Long-Felt need. The content of these declarations shows that a product of this type has long been needed and has not been provided by the prior art, and the commercial success of the product coupled with the long-felt need overcomes the obvious-type rejection.

A copy of a **TIME** Magazine article of July 19, 2004 (Exhibit 1) shows prevalence of gluten intolerance and that action is needed by lawmakers to provide warnings for products that include gluten. Breads and cereals include gluten and are unavailable for those who suffer from diseases such as Celiac disease. Dessert products cannot be enjoyed by those with gluten intolerance based on the gluten in virtually all conventional dessert products. Many of those with gluten intolerance have a propensity for diabetes (sugar-related disease) as reference in Exhibit 1. The combination of ingredients in the proportions set forth in the present claims provides a gluten-free and sugar-free solution to these issues, not provide in the prior art.

As claimed, natural sweetening is provided without sugar and stabilization and binding is provided without the need for gluten to bind and support the finished product. The result is a gluten free and sugar free mix. While stabilizers, fiber and sugar alcohols have been employed in the prior art the combination and proportions of the present claims have not been shown and have not produced an all-natural sugar-free and gluten-free product.

Taking the cited references one at a time, Takemori discloses a process for preparing a de-lactose milk having a fat and a protein which are homogenized. Its aim is to reduce lactose content. The finished product is a powered form of milk or reconstituted form of milk.

Pflaumer is directed to cookies with extra fiber. Xylitol is mentioned, but the ingredients include flour (dough) and therefore require gluten. While the product is a cookie, the combination of ingredients and their proportions provided in the present claims is not taught or suggested. In addition, the end result of an all-natural gluten-free, sugar-free product is not disclosed or suggested.

Kim is directed to a light bakery product which reduce the amount of wheat flour used, but do not eliminate it. Xylitol is also employed. The combination of whey protein in an amount between about 2 to about 40% by weight to support a structure of the food and at least one of a fiber or a stabilizer is not disclosed or suggested. Instead, Kim requires wheat flour in order to at least sustain the structure. This supports the present application where the inventor has determined a way to provide stability without gluten.

Kim teaches that lowering the carbohydrate content is only possible if the amount of flour and the sugar are substituted (col. 1, lines 42-49). Kim also suggests that replacing the flour content results in a deterioration of the taste. Despite the desire of Kim to reduce the amount of wheat flour (gluten), the wheat flour was maintained in all embodiments.

In contrast, the present invention does not teach gluten as an ingredient, and the inventor has devised a formulation, which provides both no gluten and no sugar in a tasty and stable structured product. The prior art has not achieved this, nor is the combination of ingredients disclosed or suggested by the prior art. Even if, *arguendo*, all of the ingredients have been taught, the combination of ingredients has not been disclosed in a way that one skilled in the art would be

able to arrive at the present invention, as claimed. It is further noted that the ingredients and proportions set forth in the dependent claims have not been disclosed or suggested by the cited art, either alone or in combination. (See e.g., claims 43, 45, etc.).

It is therefore respectfully submitted that the present claims are in condition for allowance over the cited art. The present invention teaches a novel formulation that provides a gluten free and sugar free all natural product that is both stable and tasty.

The combination of elements provided in the present claims provides a product needed in the marketplace and not yet provided in the prior art. Evidence of this has been submitted herewith in the form of Rule 1.132 declaration(s) showing additional evidence of commercial success and long-felt need for products in accordance with the present claims.

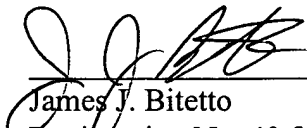
While the present claims are believed to be in condition for allowance for at least the reasons stated, the declarations of commercial success and long-felt need will provide “a proper showing that further establishes a coaction or cooperative relationship between the selected ingredients which produces a, new, unexpected and useful function” of the present invention in accordance with *In re Benjamin D. White* 17 C.C.P.A. (Patents) 956, 39 F. 2d 974.

In view of the foregoing amendments and remarks, it is respectfully submitted that all the claims now pending in the application are in condition for allowance. Early and favorable reconsideration of the case is respectfully requested.

It is believed that no additional fees or charges are currently due. However, in the event that any additional fees or charges are required at this time in connection with the application, they may be charged to applicant's representatives Deposit Account No. 50-1433.

Respectfully submitted,

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